

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

CAROLYN CAMPBELL, *Administrator
of the Estate of Paul Dewey Campbell, III,*

Plaintiff,

v.

ACPRODUCTS, INC. and MASTER
WOODCRAFT CABINETRY, L.L.C,

Defendants.

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Case No. 2:21-cv-00101-JRG-RSP

ORDER

Defendant ACProducts, Inc. (“ACPI”) previously filed its First Amended Rule 12(b) (6) Motion to Dismiss (Dkt. No. 12), and Plaintiff/Counter-Defendant Carolyn Campbell, *Administrator of the Estate of Paul Dewey Campbell, III* filed her Partial Motion to Dismiss Under FRCP 12(b)(6), as to Defendant Master Woodcraft Cabinetry, L.L.C.’s Counterclaim (Dkt. No. 17). Magistrate Judge Payne entered a Report and Recommendation (Dkt. No. 38), recommending denial of ACPI’s motion and grant of Plaintiff’s motion. ACPI and Defendant Master WoodCraft Cabinetry, L.L.C. (collectively, “the Defendants”) have now filed Objections. (Dkt. No.39.)

After conducting a *de novo* review of the briefing on the parties’ motions, the Report and Recommendation, and the briefing on Defendants’ Objections, the Court agrees with the reasoning provided within the Report and Recommendation and concludes that the Objections fail to show that the Report and Recommendation was erroneous. Consequently, the Court **OVERRULES** Defendants’ Objections and **ADOPTS** the Report and Recommendation and

orders that the ACPI's First Amended Rule 12(b)(6) Motion to Dismiss (Dkt. No. 12) be **DENIED** and Plaintiff's Partial Motion to Dismiss Under FRCP 12(b)(6) (Dkt. No. 17) be **GRANTED**. The Court **DENIES** Defendant Master WoodCraft Cabinetry, L.L.C.'s alternative request for leave to amend the counterclaim because it is untimely, in view of the close of fact discovery, and futile, in view of the failure to articulate a plausible claim.

So ORDERED and SIGNED this 15th day of March, 2022.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE